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RECENT LEGAL LITERATURE

HANDBOOK OF THE LAW OF EVIDENCE. Second Edition, Revised. By John Jay McKelvey, A.M., LL.B., of the New York Bar. St. Paul: West Publishing Company, 1907, pp. xvii, 540.

The first edition of this work, published in 1897, readily took its place as one of the best, if not the best, of the smaller works presenting in brief form a modern treatment of the law of evidence. Making no pretention that his is an exhaustive treatment, such as is Professor Wigmore's great work for example, the author aspires only to "restate the principles of the law of evidence in a manner easy of comprehension for the student, and, for the practitioner, easy of application."

The second edition is not, in its general plan and method of treatment of the subject, very different from the first. The author disclaims again any attempt to extend the citation of cases or to do more than to "give a statement of principles with illustrations of their application, and some discussion of the manner of their development." "The work will therefore," he says, "serve better one who seeks light upon the law of evidence viewed as a science than one who seeks a precedent for some particular case."

This statement well suggests the character of the work. It leans to the theoretical and scientific, rather than to the merely practical side.

The most notable modification of the matter of the former edition may be found in the chapter on "Judicial Notice," which has been rewritten. There is evidence in this chapter that the problem of judicial notice is not without its difficulties. The idea that a court may take judicial notice of a fact which has no existence will always suggest trouble. The conception that the doctrine of judicial notice is both "mandatory and permissive" is more easily stated than established from decided cases. The question of whether a litigant has the right to insist that the court shall take notice of a fact within the class of facts to which the doctrine of judicial notice is applicable, can scarcely be said to be satisfactorily settled in the negative by the author's discussion.

Few books are so well made that some one may not be found who is willing to question each in some particular, and it must be said that a better general discussion of the whole law of evidence in five hundred pages can scarcely be found today than this second edition of McKelvey's Evidence.

V. H. L.

A SUPPLEMENT TO A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW, CONTAINING THE STATUTES AND JUDICIAL DECISIONS. 1904-1907. By John Henry Wigmore. Boston: Little, Brown & Company, 1908, pp. xiii, 459.

The profession were scarcely prepared for the announcement that there was so soon to be added a fifth volume to the four volumes published about three years ago on the Law of Evidence, under Professor Wigmore's authorship.

This volume accomplishes two main objects, it brings the case law down to date and furnishes the whole work with an index much improved.

The plan of this new volume follows the arrangement of the original work. The section number is retained and the new matter classified under the various sections as in the earlier volumes.

Comparatively little is added to the text, the great body of new material being added to the notes. In not more than four or five cases have new sections been added. New paragraphs have been added to other sections in some cases, but these instances are not frequent. It is noticeable that in a few instances the author has substituted new statements instead of those found in the earlier work, but these are even more rare. This is an indication that upon this review of the subject for the purpose of making this new volume the author finds little occasion to modify his previous views—a conclusion with which the profession will generally be in accord.

The collection of this new body of case law evidences again, what was most conspicuous in the main work, that the cases have been gathered as the result of the most thorough research, and have been arranged with rare discrimination; a discrimination which marks Professor Wigmore as the master in this field of the law.

The index for the four earlier volumes was the most unsatisfactory portion of the work. This has been greatly improved by the addition of many new titles and a more detailed analysis of the titles generally. It is difficult to suggest any improvement in this as an exhaustive treatment of the law of evidence, short of a reprint of the five volumes with the new matter added in its proper relation.

Professor Wigmore, in his preface, makes several interesting statements. "The Opinion rule must go." * * * "Let all else stay, with a mending of parts." This is but a more positive expression of what was stated more in the nature of "mere opinion" earlier. The declaration is quite likely to be true as to the opinion rule in its present form, if it may be said to have any definite form, but though it may be true, courts and lawyers are going to be troubled with it yet for a generation. The author's prefatory statement upon the doctrine of "judicial discretion" is well worth consideration. With some improvement in the manner of selection of judges in some quarters, and with a lengthening of the term of service of the judges of some of our state courts, it certainly would simplify very greatly the administration of the law of evidence if many questions now controlled by hard and fast rules of law could be submitted to the discretion of the presiding officers. May we not be compelled to wait too long for this day.

The fact that the new volume is published by Little, Brown & Company insures the best in every mechanical feature.

V. H. L.

MODERN BUSINESS CORPORATIONS, including the organization and management of private corporations, with financial principles and practices. By William Allen Wood, M.S., LL.B., of the Indianapolis Bar, with forms written or selected by Louis B. Ewbank, LL.B., of the Indianapolis Bar. Indianapolis: The Bobbs-Merrill Co., 1906, pp. xi, 358.